

ARIZONA SPECIFIC BARE CRANE LEASE TERMS AND CONDITIONS

PREAMBLE

THESE TERMS AND CONDITIONS ("AGREEMENT") APPLY TO THE EQUIPMENT AND OPERATING PERSONNEL SUPPLIED BY COMPANY (ALSO REFERRED TO AS "SUPPLIER") AND /OR THE CUSTOMER AND ALL THEIR AFFILIATED ENTITIES. EACH IS KNOWN AS A PARTY AND JOINTLY AS PARTIES. IT IS THE PARTIES' INTENT THAT THESE TERMS AND CONDITIONS ("T&C'S") SHALL SUPPLEMENT AND/OR CLARIFY THE T&C'S OF ANY PRIOR RENTAL/LEASE AGREEMENT WITH CUSTOMER RELATING TO THE SUBJECT JOB OR ANY OTHER JOB INVOLVING THE PARTIES TO THIS AGREEMENT. IF ANY OF THESE T&C'S ARE INCONSISTENT WITH ANY T&C'S OF ANY SUCH PRIOR MASTER SERVICE AGREEMENT, PURCHASE ORDER, CONSTRUCTION AGREEMENT, MASTER RENTAL AGREEMENT, UPPER-TIER AGREEMENT, PRIME AGREEMENT, RENTAL/LEASE AGREEMENT (ALL REFERRED TO AS UT AGREEMENT) WITH CUSTOMER, THEN THESE T&C'S SHALL PREVAIL OVER SUCH PRIOR INCONSISTENT T&C'S AND/OR ANY OF THE PROVISIONS OF ANY AGREEMENTS ISSUED BY CUSTOMER OR COMPANY AT ANY TIME, INCLUDING OR BASED ON ANY BID, ESTIMATE, OR PROPOSAL (BEP) OR QUOTE UNLESS OTHERWISE AGREED TO IN A SUBSEQUENT WRITING SIGNED BY BOTH PARTIES (AMENDMENT). CUSTOMER SHALL BE CONCLUSIVELY DEEMED TO HAVE ACCEPTED THE T&C'S OF THIS AGREEMENT, HEREIN, AND TO HAVE ENTERED INTO THIS AGREEMENT OR FORMS THIS NEW AGREEMENT WITH COMPANY, IF CUSTOMER REQUESTS COMPANY TO PERFORM ANY WORK AFTER THE CUSTOMER'S RECEIPT OF THE QUOTE, BEP OR THESE T&C'S INCLUDING CALLING COMPANY TO SCHEDULE OR PERFORM ANY PART OF THE SCOPE OF WORK FROM THE BEP OR QUOTE SENDING A PURCHASE ORDER OR ELECTRONIC MAIL/DOCUMENT ACCEPTING THE PRICING OR ASKING COMPANY TO PERFORM ANY PORTION OF THE SCOPE OF WORK. **CONTRACT AND AGREEMENT HAVE THE SAME MEANING FOR THE SCOPE OF WORK OF COMPANY.** IN ADDITION, A MATERIAL PART OF THE PRICING ARE THESE TERMS AND CONDITIONS WHICH ARE INCLUDED AS THE PART OF SCOPE OF WORK. ADDITIONALLY, THESE TERMS AND CONDITIONS SHALL BE DEEMED EXECUTED AND BINDING EVEN IF CUSTOMER DOES NOT SIGN THE BEP, QUOTE OR THESE TERMS AND CONDITIONS. IF THE CUSTOMER CONTACTS THE COMPANY (BY PHONE, EMAIL, OR ANY OTHER METHOD) AND REQUESTS EQUIPMENT OR OPERATING PERSONNEL, THEN THE CUSTOMER AUTOMATICALLY AGREES TO PAY ON A QUANTUM MERUIT BASIS (I.E., REASONABLE VALUE OF THE SERVICES). THIS AGREEMENT INCLUDES ALL TERMS AND CONDITIONS IN THE BEP OR QUOTE, INCLUDING ANY SUPPLEMENTARY TERMS ATTACHED TO THE CONTRACT, ONCE THE COMPANY BEGINS WORK—STARTING FROM THE MOMENT THE COMPANY LEAVES ITS TERMINAL. WORK WILL PROCEED WHEN DIRECTED BY CUSTOMER OR "LIFT DIRECTOR", OR SITE SUPERVISOR. THIS AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE WORK IS BEING DONE AND ANY FEDERAL RULE, REGULATION STATUTE OR CASE LAW INCLUDING ANY FEDERAL TRANSPORTATION LAW WHILE ANY CARGO OR EQUIPMENT IS IN TRANSIT. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, INDIRECT, SPECIAL, LIQUIDATED, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OF THIS AGREEMENT OR USE OF THE EQUIPMENT OR SERVICES PERFORMED HEREUNDER. See Section 36 (Limitation of Liability) for additional information and terms.

GOVERNING TERMS

1. GENERAL TERMS AND CONDITIONS. The Parties to this Agreement acknowledge and agree that these T&C's are binding on the Parties, and Customer shall be conclusively deemed to have accepted these T&C's and to have entered into this Agreement with Company, even if not signed by Customer at the time Customer requests Company to perform any Scope of Work. If Customer requests an increase in the Scope of Work to be performed or Company supplies any additional Equipment or Operating Personnel after Customer's receipt of these T&C's, these T&C's shall again be deemed executed and binding with respect to all Work, Equipment, or Operating Personnel. Work will proceed when directed by Customer, Customer's Field Representative, Site Supervisor, Superintendent or Foreman. This Agreement shall be interpreted in accordance with the laws of the State where the Work is being done. However, for any accident occurring outside the state noted in Sections 38 (State Indemnity) and 39 (State Insurance) below, Sections 38 and 39 are deleted and incorporated by reference into this Agreement as the state Indemnity provision (Section 38) and the state insurance provision (Section 39) for the state where the accident occurs, [URL: WWW.YOURCOMPANY.COM/\(SPECIFIC STATE\) CRANE 50 STATE COMPENDIUM](http://WWW.YOURCOMPANY.COM/(SPECIFIC STATE) CRANE 50 STATE COMPENDIUM) (Update this when actual URL is activated.)

2. FINAL TERMS. THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE CUSTOMER AND THE CUSTOMER REPRESENT THAT SAID PERSON HAS THE AUTHORITY TO EXECUTE THIS AGREEMENT AND TO BIND THE CUSTOMER TO THE TERMS OF THIS AGREEMENT. THESE TERMS AND CONDITIONS ARE THE FINAL TERMS AND CONDITIONS BETWEEN THE PARTIES. Customer shall be conclusively deemed to have accepted these Terms and Conditions and any incorporated terms (herein "Agreement"), and to have entered into this Agreement with Company. Company and Customer, each shall be known as a Party

and together they shall be known as Parties. The rental period shall commence upon either the start of performance by Company or the execution of this Agreement or any quote by Customer. This Agreement is valid for the greater of 364 days, or the duration of the project, for this any and any other Equipment leased to Customer. The Company's quote is incorporated by reference into these T & C's. Customer agrees to sign the Company's Daily Work Ticket or LEM Ticket at the beginning of the shift and the end of the shift confirming that the Scope of Work was performed.

3. INTERPRETATION. This Agreement shall be interpreted as an understanding of Parties on equal footing and without resort to any rule of construction resolving ambiguity against the drafter.

4. SURVIVAL- SEVERABILITY. To the fullest extent permitted by the laws of the state where the Equipment is being used, provisions of this Agreement shall be interpreted to be valid and enforceable under applicable law; provided, however, that if any provision is held invalid or unenforceable, such provision will be deemed deleted from the Agreement and replaced by a valid and enforceable provision which so far as possible achieves the Parties' intent in agreeing to the original provision. The Agreement's remaining provisions will stay in effect. This document is a complete and exclusive statement of all the terms of this Agreement and includes all the representations of the Parties. All prior discussions and negotiations are incorporated into this Agreement as the final Agreement of the Parties. All of the representations, warranties and indemnities contained in this Agreement shall survive the expiration, suspension or termination of this Agreement.

5. NO ASSIGNMENT. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, except that Customer shall not be permitted to assign this Agreement without the express written consent of the Company.

6. HEADINGS. The section or section headings in this Agreement are inserted only as a matter of convenience and for reference and in no way, define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement or its interpretation.

7. VALIDITY OF PROVISIONS. If any provision of this Agreement is ever held to be invalid or unenforceable, that provision will be severed from the rest of this Agreement, and all of the other provisions of this Agreement will remain in effect. The Parties agree that it is the intention of the Parties that this Agreement is valid and complies with all laws.

8. EXECUTION/COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same, document. The terms of this Agreement shall not be altered in any manner except by written instrument signed by Company and Customer and shall be binding upon and inure to the benefit of their permitted successors and assigns.

9. AUTHORIZED SIGNATURE. In the event this Agreement has been executed by an individual on behalf of a corporation or other business entity, the person whose signature is affixed hereto and the entity for which the individual has signed this Agreement, represent to Company that the individual signing has full authority to execute this Agreement on behalf of said corporation or other business entity. Company is relying on this representation by Customer and as such, Company is providing Equipment and Operating Personnel.

SCOPE OF WORK AND RESPONSIBILITIES

10. RESPONSIBILITIES OF COMPANY. Company shall provide the Operating Personnel and Equipment shown in this Agreement, Quote, BEP or its equivalent, in good working order. The Equipment and Operating Personnel shall be made available pursuant to the schedule agreed by the Parties. **Company is not supplying any materials, supplies or product under this Agreement. Company does not warrant the suitability or fitness of any supplies, supplies, product or material for any particular purpose and further disclaims all liability arising from the suitability or fitness of any supplies, product, or material for any particular purpose.**

11. RESPONSIBILITIES OF CUSTOMER. The Customer shall a.) Abide by these terms and conditions, including all terms and conditions incorporated herein; b.) Provide safe and reasonable access to and egress from job site (See Section 17 (Free and Clear Access)); c.) **Company is not responsible for providing any supplies, materials or goods for installation into any personal or real property;** d.) Provide for reasonable scheduling of deliveries while Company Equipment is on site; e.) Provide for a reasonable on-site area for Company's Equipment assembly, disassembly, erection, mobilization, demobilization repairs or maintenance ("A&D"); e.) Perform all necessary cleanup of any A&D area, Company is not responsible for any cleanup of A&D area; f.) Provide labor where required for access, egress, or ingress as needed; g.) Provide timely notice of any schedule changes, with a minimum of 4 business day notice for any delays or cancellations; and h.) Secure any necessary permits, easements or licenses required by Federal, state or local agencies for the performance of the lifting service by Company on the job site. Customer retains sole, exclusive, and non-delegable control over the manner, means, methods, sequencing, coordination, and safety of the Work Site as set forth in Section 12 (Control-Job Site Safety),

and all Work performed by Company Operating Personnel shall be performed strictly in accordance with Customer's exclusive direction supervision and control. Company furnished Operating Personnel shall be qualified and competent for their assigned tasks, however, Company shall not provide any rigging personnel, signal personnel. Company shall deliver the Equipment for use in good operating condition. If the Equipment is damaged as result of Customer's directions including A&D, use, placement, transportation on the project site, repair/maintenance location, then Customer shall be responsible for all repairs to the Equipment. No back charges shall be levied against Company for delays or stoppage which arise out of this Agreement. Customer and Controlling Entity are responsible for directing, controlling, and supervising the manner, means and methods of the Work. Additional Responsibilities of Customer are contained in all the other sections of this Agreement.

OPERATIONS, CONTROL OF WORK AND SAFETY

12. LIFT DIRECTOR. It shall be the sole duty and responsibility of the Customer to designate, for all Work, an experienced, trained, and competent Lift Director and Site Supervisor, as defined by applicable OSHA, ANSI and ASME standards, including but not limited to ASME B30.5 (2025) and P30.1 (2024) (or current editions) and such individuals shall act exclusively as agents of the Customer with full, sole, and exclusive authority and responsibility to direct, supervise, and control all aspects of the Work, including but not limited to the operation, signaling, rigging, spotting, welding, technical work, mobilization, demobilization, maintenance, and assembly or disassembly of the Equipment by all personnel involved, (collectively, "Operating Personnel"), with the Customer retaining exclusive responsibility for all instructions, supervision, safety, and the means, methods, and sequencing of the Work and the operation of the Equipment, and with the express understanding that Company does not supply the Lift Director and shall have absolutely no control, authority, or right to direct the Lift Director, Site Supervisor, or any Operating Personnel, all of whom shall remain under the exclusive direction and control of the Customer at all times, regardless of whether any personnel are provided, recommended, or supplied by Company, and any such personnel shall be deemed Borrowed Servants of the Customer under the Borrowed Servant Doctrine and shall be considered employees of the Customer for all purposes, including liability. Lift Director shall have the exclusive right and obligation to supervise and control the use, operation, and direction of the Equipment and all Operating Personnel, including the authority to stop all operations for safety concerns and to remove or reject any personnel or practices deemed unsafe. Actions taken by any personnel, including refusal by an operator to follow a direction due to safety concerns, shall not alter or diminish the Lift Director's exclusive authority and responsibility, and the Customer acknowledges that all Equipment use and Work performed shall be solely within and in furtherance of the Customer's contractual Scope of Work on the project. Company shall have no authority to replace, substitute, or direct Operating Personnel except with the prior express approval of the Lift Director. Any approved substitution remains under the sole direction and control of the Customer, and the Customer assumes full responsibility and liability for any and all loss, damage, injury, or death arising out of or related to the acts or omissions of the Lift Director, Site Supervisor, or any Operating Personnel, including Special Employees, regardless of any involvement, recommendation, or provision of personnel by Company.

13. OPERATIONS LHE. Customer shall, at all times, direct the operation and movement of the Equipment (also referred to as load handling Equipment or "LHE") in a safe and competent fashion and shall be responsible for the actions of all those persons involved in the operation or movement of the Equipment. Customer shall, at all times, comply will all applicable local, state, federal and provincial statutes, rules, regulations, and National Standards including OSHA 29CFR1926.1400-1444 including subpart CC, ANSI and ASME B30.5(2025) and P30.1(2024) relating to the operation of the LHE. During use and operation of the Equipment, Customer, directly and through its agents, servants, and employees, shall at all times, assume the roles and fulfill all the responsibilities of the a) Lift Director, b) Lift Planner, c) Site Supervisor, d) controlling entity as defined by OSHA, e) Site Safety Officer, f) Crane User and/or LHE User, g) Signalperson, h) Rigger, and i) Spotter; as those terms are defined in 29CFR1926.1400-1444 including subpart CC (OSHA), ASME P30.1 (2024) Lift Planning and ASME B30.5 (2025). If Company supplies any lifts plans for use by the Customer and/or the Lift Director, Customer agrees that the lift plans are supplied for informational purposes only, and the Lift Director is ultimately responsible to review and approve the lift plan for use. Customer is solely responsible for gathering and providing all information used in the lift plan. Customer hereby guaranties that those agents, servants, and employees assigned the roles and functions set forth above shall be, at all times, through education, training, experience, skill, and physical fitness, as necessary, competent and capable to perform the functions they are assigned. Company is not providing any Signal Person, Lift Director, Site Supervisor, Site Safety Supervisor, nor any rigging services unless provided in the Company's BEP or Scope of Work.

14. RIGGING. Customer is required to provide any and all Rigging or similar devices to be used with the Equipment. In addition, rigging is not limited to, chokers, slings, straps, chains, hooks, spreaders, fittings, rope, or wire. Customer and the Lift Director assume responsibility for the manner, means, and method of rigging; the condition of the rigging, the condition and use of any lifting lugs, and hereby guaranty that those agents, servants and employees involved in the rigging of any load shall be, at all times, through education, training, experience, skill, and physical fitness, as necessary, competent and capable to perform the functions they are assigned. If Company supplies any rigging, then the Lift Director is solely and exclusively responsible for inspection and approval of rigging to be used.

15. LOAD CALCULATIONS AND DEVICES. If any Equipment includes a load measuring device, the Customer acknowledges and agrees that such device is provided for convenience only and that Company makes no warranties or representations, express or implied, regarding its accuracy, reliability, or consistency. Customer expressly agrees not to rely on any such device for determining load weight under any circumstances. Customer assumes full and exclusive responsibility for independently determining the weight of each load, calculating the Equipment's lifting capacity for every lift, and determining whether any lift may be safely performed, all based solely on the Customer's own expertise and judgment in coordination with the Lift Director. Customer further assumes all risks, liabilities, losses, and damages arising out of or related to (i) any reliance on a load measuring device, or (ii) any failure to properly determine load weight or lifting capacity, regardless of any alleged negligence, error, or omission by Company.

16. FREE AND CLEAR ACCESS. Company requires safe, free and clear access, ingress and egress, to any work/project site for Operating Personnel and Equipment, and a safe site with a clear area for Assembly, Disassembly, Mobilization, Demobilization ("A&D") and for operation of Equipment. Customer is solely responsible for providing a safe site for any access, ingress and egress and operation of the Equipment, along with relocation or removal of all obstacles including but not limited to overhead power lines, curbing, signs, fencing, or other obstructions, stable and compacted ground conditions suitable for the A&D and operation of all Equipment.

17. GROUND/POWERLINES. Customer, as the controlling entity under applicable OSHA regulations including but not limited to 29 CFR 1926.1402, 1926.1408, and 1926.1409, and as set forth in Section 12 (Control-Job Site Safety), shall assume sole, absolute, and non-delegable responsibility for all ground conditions, supporting materials, site preparation, and protection against power line hazards in connection with the transportation, assembly/disassembly, mobilization/demobilization, use, operation, storage, and placement of the Equipment., "Ground conditions" are defined as the ability of the ground to support the size, weight, configuration, and operational loads of the Equipment, including all counterweights, taking into account slope, compaction, stability, drainage, and firmness. "Supporting materials" are defined as blocking, mats, cribbing, or similar devices. Customer shall ensure that all Equipment manufacturer specifications and requirements are strictly satisfied and that Equipment shall not be assembled or used unless ground conditions are firm, properly compacted, drained, and graded to achieve adequate support and level, including through the use of supporting materials, as necessary. The Customer shall be solely responsible for all site preparation, including the identification, evaluation, communication, and elimination of hazards in, on, around, and beneath the Equipment set-up area, including subsurface and below-grade conditions, and shall perform or cause to be performed all necessary inspections, engineering evaluations, and soil testing to confirm that ground conditions meet or exceed applicable standards, including AASHTO H-20 / HS-20 where applicable. If site conditions are inadequate to support Equipment operations or require reinforcement, relocation of utilities, or other corrective measures, all such Work and associated coordination shall be performed by the Customer at its sole cost and expense. Any delays, additional mobilization, towing, pushing, damage, or costs resulting from inadequate site conditions shall be the sole responsibility of the Customer and shall be reimbursed to Company at cost plus applicable markup. The Customer further assumes sole responsibility for ensuring that Equipment and Operating Personnel are not exposed to energized power lines, requiring that all power lines in the work area be identified prior to commencement of Work and de-energized through coordination with the appropriate utility or authorized entity. Where de-energization is not possible, the Customer shall be solely responsible for implementing all required safety measures, including insulation, grounding, maintaining minimum clearance distances, and compliance with all applicable OSHA, ANSI, and ASME standards. Customer shall not rely on proximity warning devices as a substitute for maintaining required clearances, and Company shall have no responsibility, duty, or control over ground conditions, site preparation, subsurface conditions, supporting materials, or power line safety. Customer assumes full responsibility and liability for any and all loss, damage, delay, injury, or death arising out of or related to ground conditions, site conditions, or exposure to power lines, regardless of any recommendations, inspections, or involvement by Company. Customer acknowledges and agrees that it is the "controlling employer" and "exposing employer," as those terms are defined under OSHA regulations and the multi-employer worksite doctrine, and assumes all duties and liabilities associated therewith.

18. OPERATOR / EMPLOYEE. If an operator is recommended or provided by Company with the Equipment, the Customer shall be responsible for payment of the operator's wages and benefits in the rental payment, which shall be included as part of the rental charges, even though such wages and benefits may be administered by the Company. The term "employee" or "operator" shall include all operators, oilers, riggers, millwrights, leadmen, helpers, technicians, or any other person that is assembling, disassembling, mobilizing, demobilizing and performing maintenance work or repair work on the Equipment, or providing any other work on the Equipment (all referred to as "Operating Personnel")

PERFORMANCE

19. FORCE MAJEURE. Except as otherwise expressly set forth herein, in the event a Party shall be delayed or hindered in, or prevented from, the performance of any act required of it hereunder by reason of strike, inability to procure materials, failure of power, telecommunications or connectivity failure, exercise of civil authority, restrictive governmental laws, including, but not limited to, the

Defense Production Act, disaster declarations, regulations, slowdowns, stay in place orders/shelter at home orders, material adverse change, governmental shutdowns or similar governmental requirements, riot, insurrection, war, civil unrest, protests, wind or other inclement weather, act of God, pandemic, epidemic or other widespread illness, viral slowdowns/issues, or other event outside the reasonable control of that Party (each such cause or event being hereinafter referred to as a "Force Majeure"), then performance of such acts will be excused for the period of the delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. Any time a Party is experiencing a Force Majeure that is expected to result in a significant failure or delay, that Party will endeavor to give notice to the other party describing the Force Majeure and the nature of the failure or delay and giving an estimate as to how long the delay will last. A Party claiming an excusable delay or failure under this paragraph shall use reasonable efforts to alleviate or overcome the Force Majeure as soon as practicable. A Force Majeure event shall not excuse the Customer from payment of the rental rate as originally agreed upon including any Operating Personnel wages and benefits. If this agreement is cancelled or terminated early due to Force Majeure, then Customer shall pay an additional two (2) months' rent as a cancellation fee.

EQUIPMENT & RISK OF LOSS

20. TITLE TO EQUIPMENT. The Equipment shall at all times remain the property of Company and Customer shall do nothing to encumber or interfere with those rights and shall take all actions necessary to protect those rights. Customer shall not acquire any interest in or rights to the Equipment, other than the rights of use set forth in this Agreement.

21. LOCATION OF EQUIPMENT. The Customer shall not remove the Equipment from the location shown herein as the place of use of the Equipment, without prior written approval of the Company. The Customer shall inform the Company by email upon demand of the exact location of the Equipment while it is in the Customer's possession.

22. DAMAGE TO OR DESTRUCTION OF EQUIPMENT. Following delivery to or possession by Customer, Customer shall bear sole and absolute responsibility for, and assume all risk of, loss, theft, destruction, or damage to the Equipment from any cause whatsoever, including but not limited to fire, casualty, accident, misuse, vandalism, acts of God, or any third-party acts, and no such loss or damage shall relieve Customer of any obligations under this Agreement, all of which shall continue in full force and effect without abatement, offset, or reduction; in the event the Equipment is damaged but repairable, as determined by Company or the manufacturer in its sole discretion, Customer shall, at Customer's sole cost and expense, promptly repair and restore the Equipment to a condition at least equal to its condition at the commencement of the Agreement, using only parts and companies approved by Company, and the Agreement shall remain in full force and effect during such repair; if the Equipment is lost, stolen, destroyed, or damaged beyond repair (an "Event of Loss"), Customer shall immediately notify Company and shall, within ten (10) days, pay Company the full Replacement Value of the Equipment, as determined by Company in its reasonable discretion, together with all accrued but unpaid Rent, applicable taxes, fees, and any costs incurred by Company in connection with such Event of Loss, whereupon Company shall have the sole and exclusive option to replace the Equipment with comparable equipment, in which case this Agreement shall continue and apply to such replacement Equipment, or terminate this Agreement effective upon receipt of payment, with written notice of such election to be provided within thirty (30) days following the Event of Loss; Customer shall remain liable for all Rent and other charges accruing prior to Company's receipt of full Replacement Value and shall furnish prompt written notice and satisfactory documentation of any Event of Loss as reasonably required; Company shall have the right, upon reasonable notice, to enter any premises where the Equipment is located to inspect, recover, secure, or dispose of the Equipment, and Customer waives any claims arising from such entry except in cases of gross negligence or willful misconduct; to the extent Company receives insurance or salvage proceeds relating to an Event of Loss, such proceeds shall be retained by Company, subject only to applicable law requiring remittance of any excess recovery net of deductibles and costs; Customer further acknowledges that dissatisfaction with the Equipment for any reason whatsoever, including defects, obsolescence, or manufacturing issues, shall not relieve Customer of its obligations under this Agreement, and Customer's sole and exclusive remedy, if permitted by Company, shall be return of the Equipment subject to payment of all minimum rental charges, transportation costs, and applicable fees.

23. MAINTENANCE AND INSPECTION. Customer shall allow Company entry upon or access to any premises where the Equipment is stored or used, at all reasonable times, to locate and inspect the state and condition of the Equipment. Customer agrees to inspect the Equipment and wire rope upon taking delivery. Customer's failure to notify Company in writing of any deficiencies in the Equipment within twenty four (24) hours after taking delivery or such other period of time as may be mutually agreed upon in writing, is Customer's acknowledgement that the Equipment was, when delivered, in good, safe, operational and serviceable condition in full compliance with the terms of this Agreement, in good condition and repair and is the type of Equipment that Customer has requested and fit for its intended use by Customer. On a monthly basis, Customer shall email Company the hours that the Equipment has been used so that Company can calculate any excess hours used on the Equipment. Customer agrees to allow Company access to all records and documents which Customer has concerning all maintenance or other work performed on the Equipment with a forty-eight (48) hour oral notice from Company. Customer shall conduct all maintenance on the Equipment in accordance with the manufacturer's requirements including completion of

all required inspections and shall bear all costs of whatever nature incurred in doing so. Customer will supply Company with monthly maintenance reports. Customer acknowledges that it has been provided with the manufacturer's required maintenance and inspection schedules with the "Equipment" and that it is the Customer's responsibility to comply with those schedules at the Customer's expense. Failure to comply with these requirements will result in the Customer being charged for the applicable maintenance along with wear and tear of Equipment due at the time Customer returns the Equipment. Customer will be invoiced for parts and labor required to perform this service at the Company's normal rates. In all instances, if the Equipment is damaged or made inoperable in any way during the period of possession, Customer shall notify the Company in writing, within two working days of such occurrence, specifying the nature and extent of the damage. Without first obtaining Company's written consent, Customer shall not incur any liability or expend any money for Company's account. The title to all parts, materials and supplies furnished to the Equipment becomes the property of the holder of the title to the Equipment. All accessories or attachments not listed herein or necessarily includable, as part of the Equipment shall be furnished by Customer at its own expense. Customer shall maintain the Equipment in good, safe operating condition and shall bear all cost of whatever nature incurred while doing so.

24. DEMURRAGE. If as a result of the Customer's actions and unless permission is granted by the Company, if the Equipment is not returned during or at the end of the term, then for every hour, or portion thereof, from the end of the term to the time when the Equipment is returned to the Company, as required herein, the Customer shall pay a rental rate equal to three (3) times (x) the standard hourly rental rate for such Equipment.

25. RENTAL OF EQUIPMENT. These T&C's, and Provisions contained herein pertain to all Customer Rental/Lease Agreements, including Bare or Manned Rentals/Leases. In the event certain Operating Personnel are recommended by Company to Customer or provided to Customer along with the Equipment at Customer's request, such Operating Personnel are deemed SEs of Customer (as that term is defined in Section 20 (Special Employee)), and treated as employees of Customer for all purposes for the entire term of the Agreement, including for all Work and services performed and to be performed in connection with use and operation of the Equipment. Such Operating Personnel are, at all times, subject to the sole and exclusive jurisdiction, supervision, direction and control of Customer and Customer's Lift Director (as that term is defined in Section 13 (Lift Director)), and all compensation for labor performed by such Operating Personnel, including but not limited to wages, salary, union dues and Workers' Compensation, is to be paid by Customer although administered through the Company. For Manned Rentals/Leases, Customer shall provide certain Operating Personnel to Customer along with the Equipment, for the sole purpose of performing Work and services relating to the use and operation of the Equipment, and such Operating Personnel shall be deemed SEs of Customer reporting to the Customer's "Lift Director". For Manned Rentals/Leases, Company shall be responsible for administering the compensation of the Operating Personnel however, as is the case with Leases, all Operating Personnel on Manned Rentals/Leases, shall at all times be subject to the sole and exclusive supervision, direction and control of Customer and Customer's Lift Director who is responsible for the manner, means and methods for all Operating Personnel.

26. RENTAL DECISIONS. CUSTOMER HAS MADE THE DECISION TO RENT THIS EQUIPMENT AND OPERATORING PERSONNEL BASED ON CUSTOMER'S REQUIREMENT'S FOR THIS PROJECT. COMPANY MADE THIS EQUIPMENT AND OPERATORING PERSONNEL AVAILABLE FROM A POOL OF AVAILABLE OPERATING PERSONNEL AND MACHINES FOR CUSTOMER'S USE AND THE DECISION TO USE THIS EQUIPMENT AND ANY OPERATING PERSONNEL IS SOLELY CUSTOMER'S DECISION. **THE PROVIDED OPERATING PERSONNEL IS NOT THE LIFT DIRECTOR NOR SITE SUPERVISOR.** CUSTOMER RENTS THE EQUIPMENT IN GOOD WORKING ORDER, BUT COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DELAY, OR DAMAGE RESULTING FROM DEFECTS IN THE EQUIPMENT OR ANY ACCIDENTAL BREAKAGE. NOTWITHSTANDING THE FOREGOING, COMPANY SHALL REPLACE THE EQUIPMENT WITH SIMILAR EQUIPMENT IF THE EQUIPMENT FAILS TO OPERATE IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATIONS AND/OR OPERATING INSTRUCTIONS CAUSED BY THE NEGLIGENCE OF THE COMPANY. SUCH REPLACEMENT SHALL BE MADE AS SOON AS REASONABLY POSSIBLE AFTER CUSTOMER RETURNS THE NON-CONFORMING EQUIPMENT. Customer acknowledges that the equipment is of size, design, capacity, and manufacturer selected by Customer. Company has not made, and does not make, any representation, warranty, or covenant express or implied with respect to condition quality durability or suitability of the Equipment. Company makes no representations or warranty of any kind that the Equipment is or shall be fit or suitable for any specific purpose or purposes of Customer. This document is a complete and exclusive statement of all the terms of this agreement and includes all the representations of the Parties. Company makes no other express or implied warranties respecting the Equipment nor shall this contract be varied, supplemented, qualified, or interpreted by any prior course of dealing between the Parties or by any usage of trade. The Company is not the manufacturer of the Equipment nor the manufacturer's agent for any purpose.

DISSATISFACTION WITH LEASED EQUIPMENT AFTER ACCEPTANCE: If the leased Equipment is or becomes defective or unfit FROM ANYCAUSE WHATSOEVER INCLUDING ANY MANUFACTURING DEFECTS or the Customer desires to cease the use of the leased

Equipment for any reason whatsoever, **THE CUSTOMER'S SOLE RIGHT AND REMEDY SHALL BE THE RETURN OF THE LEASED EQUIPMENT TO COMPANY AND THE TERMINATION OF THIS LEASE.** In the event that Equipment is returned, the Customer charges shall in no event, shall be less than the transportation costs and the minimum rental as provided.

27. WARRANTIES. Contractor is a Lifting service company, lifting supplies, goods or cargo at the Customer's sole and exclusive direction. There is no warranty after Work is completed on each shift.

PRICING, PAYMENT & COMMERCIAL TERMS

28. SECURITY DEPOSIT. Any security deposit paid by Customer to Company, is paid to guarantee Customer's full and faithful performance of all terms, conditions and provisions of this Agreement, including rental payments. When Customer performs all such terms, conditions and provisions, an equal sum shall be repaid without interest to Customer.

29. PAYMENT. In accordance with this Agreement, Customer shall pay Company within 30 days of the date of invoice. Paid when Paid is not permitted under this Agreement notwithstanding any other language in any document.

30. SUSPENSION PERIOD. If Customer notifies Company in writing that Customer will not need the Equipment for such period(s) of time as are specified in such notice (the "Idle Periods"), and Company desires to rent the Equipment to a third party during some or all of the Idle Periods, then Company shall have the right to suspend this Agreement by notifying Customer in writing (no oral approval of Suspension Period is allowed) of those portions of the Idle Periods during which this Agreement will be suspended (each, a "Suspension Period"; together, the "Suspension Periods"). During each Suspension Period:

- (1) Subject to the provisions of (2) below, this Agreement will remain in full force and effect.
- (2) All of Customer's obligations under this Agreement are not suspended except for Customer's obligation to pay Rent during the Suspension Period or Periods.
- (3) Company will have the right to rent the Equipment to one or more other Third-Parties.
- (4) Customer will not be entitled to use the Equipment during the Suspension Period or Periods.

At the end of each Suspension Period, Company shall once again make the Equipment available to Customer in substantially the same condition and repair as it was in at the start of such Suspension Period, normal wear and tear excepted.

31. OCIP-CCIP-CONTRACTOR CONTROLLED PROGRAMS. Company is not responsible for providing any on-site insurance coverage when an OCIP-CCIP-Contractor Controlled Program is in place.

32. TAXES; FEES; PERMITS. Customer shall be responsible for any sales, use, excise, value added, utility, personal property or other taxes and any license fees, permits and/or assessments relating to Customer's use or possession of the Equipment. Customer shall pay such taxes and other charges to Company in accordance with invoices submitted by Company.

33. SPECIAL MISCELLANEOUS CONDITIONS THAT ARE ALSO A MATERIAL PART OF THE PRICING AND SCOPE OF WORK

- a. **ESTIMATE NATURE AND PRICING.** Any BEP provides unit pricing and estimated totals for all Equipment, services, and Operational Operating Personnel to be supplied. No Quote is provided unless expressly stated otherwise in writing. This is not a fixed-price or lump-sum quotation. The BEP contains pricing which is based upon years of experience of Company and its Operating Personnel and could if given to competition of Company be a violation of Federal, State and or Local laws.
- b. **INSURANCE COVERAGE.** Company's insurance coverage is limited to the coverages described in the Certificate of Insurance provided to the Customer. If the Customer requests additional coverage or indemnification, Company will issue a separate quotation for such costs. Company's indemnity obligations under any agreement or contract shall not exceed the insurance coverage nor the limits contained in its Certificate of Insurance.
- c. **EQUIPMENT AVAILABILITY.** All BEP's are subject to Equipment availability at the time the Work is scheduled.
- d. **PROPOSAL VALIDITY.** All BEP's are valid for 30 days from the date issued.
- e. **TERMS INCORPORATED BY REFERENCE.** All pricing incorporates these Terms and Conditions ("T&C's") contained herein and those located in Company's BEP. These T&Cs form a material part of the Company's scope and pricing.

- f. **RETENTION.** No retention or withholding of contract sums by the Customer is permitted.
- g. **MOBILIZATION, DEMOBILIZATION & OVERTIME.** Mobilization, demobilization assembly, disassembly, repairs, maintenance and transportation—occur on regular workdays at straight-time rates. Equipment subject to US DOT, FMCSA, state, county and local governmental travel restrictions which may require overtime or alternate-day or night movement. All rates are portal-to-portal from the Company's home terminal.
- Overtime applies to hours exceeding 8 per day and all Saturday hours.
 - Double time applies to all Sunday and holiday hours.
 - Per diem: \$300 (low-cost areas) / \$400 (high-cost areas) per employee, per overnight stay.
- h. **WORKDAYS.** All workdays carry a 10-hour minimum unless otherwise specified. Additional labor, Equipment, or services not listed in the estimate will be billed separately to Customer.
- i. **EXCLUSIONS AND ADDITIONAL COSTS.** Unless expressly included, pricing does not cover fuel surcharges, TPP surcharges, escorts, police, road closures, traffic control, utility services, lift mats (Equipment requires a compacted level crane pad in accordance with the Equipment manufacturer's manual, or engineering.), permits, or engineered pads. Third-party costs will be billed at cost plus 20%. Canceled or rescheduled Work may incur permit and out-of-pocket reimbursement charges. OCIP, CCIP, or Certified Payroll requirements will be billed at \$250 per payroll report.
- j. **OWNERSHIP OF PLANS AND DOCUMENTS.** All lift plans, specifications, quotes, estimates, proposals, and bids provided by the Company remain Company property, including all copyrights and Trade Secrets. Distribution is given on a limited basis to Customer and Customer's employees and may not be given to any person or entity not an employee of Customer. They may only be used for evaluating the proposed services and may not be disclosed to any competitor or third-party. If no contract is entered, all materials must be returned. Unauthorized use grants Company full legal remedies. See also Section 52 (Trade Secrets) for additional T&C's.
- k. **ACCEPTANCE OF TERMS.** In the absence of a signed quotation, any dispatch request for Operating Personnel or Equipment constitutes acceptance of the estimate, scope, pricing, and all T&Cs. Customer's field Operating Personnel are deemed authorized to sign daily Labor, Equipment and Materials (LEM) tickets (which are also called Work Order's) or Daily Work Ticket at the start and end of each shift. These tickets act as daily Change Orders and confirmation of Scope of Work performed.
- l. **HAZARDOUS MATERIALS.** The Company is not responsible for transporting any hazardous materials as defined by federal or state DOT regulations.
- m. **UTILITY SERVICES.** Unless specifically included in the estimate, proposal or bid costs for utility assistance—including raising or de-energizing power, telephone, or cable lines—will be billed at cost plus 20%.
- n. **SUBCONTRACTING.** Company reserves the right to subcontract or broker any portion of the Scope of Work.
- o. **TRANSPORTATION COMPLIANCE.** All transportation is subject to all applicable federal, state, and local laws, regulations, and permitting requirements.
- p. **SUSPENSION FOR NON-PAYMENT.** Work on any Customer job may be suspended or terminated immediately if any invoice remains unpaid 30 days after issuance. All invoices must be paid within 30 days of the date of invoice.
- q. **INCORPORATION INTO MASTER AGREEMENTS.** These T&Cs constitute the sole and exclusive terms governing all Work performed. The Parties understand these T&Cs supplement and supersede any other contract or agreement and it is the Parties intent that Terms and Conditions supersede any Master Service Agreement, Subcontract Agreement, Prime Contract, Purchase Order, or similar document executed at any time. Any conflicting or additional Customer terms are expressly rejected and are not part of Company's Scope of Work. Performance by Company does not constitute acceptance of any Customer-provided terms, conditions or provisions. See Preamble and Section 1 (General Terms and Conditions) for additional T&C's.

34. RENTAL PERIOD AND CHARGES. The rental period shall start at the time the Equipment first leaves the Company's yard/terminal. The

rental period includes all time necessary for the transport, mobilization, demobilization, assembly and disassembly of the Equipment and continues until the Equipment is returned and accepted by the Company in the same condition that the Equipment was in at the time Customer took possession of the Equipment. Equipment will not be accepted by the Company until it is returned in the same condition as when the Equipment left the yard of Company. **If the Equipment is returned in a damaged state, this Agreement is extended until the Equipment is restored to its condition at the time it left the Company's yard at the inception of this Agreement.** If a periodic rental rate is charged by the Company, rental charges will be billed to the Customer for each period or portions of the period from the time the Equipment leaves the Company's yard, until it is returned and accepted by Company in the same condition as when the Equipment left the yard of the Company. If a term rental rate is charged by Customer, rental charges are billed to the Customer for the full term even if the Equipment is returned before the end of the term. Each piece of Equipment is charged based upon a 160-hour monthly use of the Equipment. Any Equipment used more than 160 hours in a calendar month will be charged for each additional hour or fraction thereof per month as follows: Hours of operation in excess of 160 hours per month ÷ 160 hours x monthly rental rate. **There are no unused-time carryovers allowed from month to month.** No allowance or off rental cycle or allowed without a prior written amendment to this Agreement executed by an officer of Lessor will be allowed for any Equipment, or accessory, which is claimed not to have been used. **The Company's Salesperson has no authority to modify, change or alter this Agreement.** The Customer further covenants and agrees to open for inspection by the Customer, any and all payroll records and hour meters for the purpose of verifying the actual hours worked.

35. RENTAL PAYMENTS; NO SET-OFF. All invoices submitted by the Company shall be due and payable by Customer within ten (10) days of date of invoice. Customer shall pay to Company an interest penalty of the highest rate allowed under applicable law, or 1.5% per month, whichever is greater on the total balance of any and all invoices, or any portion of any and all invoices, that remain unpaid thirty (30) days after receipt by Customer. This is a commercial Agreement for the rental of Equipment. Company may, upon reasonable notice, require Customer to pay rentals in advance if Customer falls more than (20) days behind in making any payment at any time. All charges for use of the Equipment must be paid as billed by the Company within 20 days of the date of the invoice and Company does not waive any requirements of the Prompt Pay statute of the state where the Equipment is being used. This not a paid when paid Agreement. All notices in accordance with the prompt pay statute must be made in accordance with the notice provisions of this Agreement. Customer acknowledges that a fundamental principle of this Agreement is that it shall pay the sums due under this Agreement as and when required and within 20 days of the date of invoice from Company. Accordingly, Customer unconditionally and irrevocably waives any and all rights to withhold from, set off against, reduce or delay any amount owed to Company, for any reason or by any amount whatsoever, including by any amount claimed to be owed by Company to Customer.

RISK ALLOCATION OF LIABILITY

36. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY OTHER AGREEMENT, COMPANY SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, REMOTE, LIQUIDATED, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOST INCOME, LOST OR DELAYED PROFITS OR REVENUE, LOSS OF BUSINESS OR GOODWILL, UNABSORBED OVERHEAD, INCREASED EXPENSES, OR BUSINESS INTERRUPTION, ARISING OUT OF OR RELATING TO THE FURNISHING, PERFORMANCE, OR USE OF EQUIPMENT OR SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY (EXPRESS OR IMPLIED), STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL LOSSES, INCLUDING THOSE ARISING FROM GOVERNMENTAL ACTIONS, LAWS, REGULATIONS, DISASTER DECLARATIONS, PANDEMICS, WEATHER EVENTS, LABOR DISRUPTIONS, SUPPLY CHAIN INTERRUPTIONS, CIVIL UNREST, OR OTHER EVENTS BEYOND COMPANY'S REASONABLE CONTROL. COMPANY'S TOTAL CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF (I) THE AMOUNTS PAID TO COMPANY FOR THE APPLICABLE EQUIPMENT OR SERVICES DURING THE THREE (3) MONTHS PRECEDING THE CLAIM, OR (II) \$10,000 (THE "DAMAGES CAP"), AND SUCH AMOUNT SHALL CONSTITUTE THE EXCLUSIVE MONETARY REMEDY AVAILABLE TO CUSTOMER, AND UNDER NO CIRCUMSTANCES SHALL COMPANY'S LIABILITY EXCEED THE DAMAGES CAP. FOR TRANSPORTED CARGO, LIABILITY IS FURTHER LIMITED TO A RELEASED VALUE OF \$2.50 PER POUND, WITH A MAXIMUM RECOVERY OF \$100,000 PER TRUCKLOAD. COMPANY SHALL HAVE NO LIABILITY FOR ANY CLAIMS ARISING FROM OR RELATING TO HAZARDOUS MATERIALS, INCLUDING BUT NOT LIMITED TO ASBESTOS, LEAD PAINT, MOLD, OR OTHER REGULATED OR UNREGULATED HAZARDOUS SUBSTANCES, AND IF SUCH CONDITIONS OR MATERIALLY DIFFERING SITE OR SUBSURFACE CONDITIONS ARE ENCOUNTERED, COMPANY SHALL BE ENTITLED TO AN EQUITABLE ADJUSTMENT IN PRICE, SCHEDULE, AND SCOPE. CUSTOMER SHALL BE RESPONSIBLE FOR ALL PROPERTY DAMAGE AND BODILY INJURY, INCLUDING DAMAGE TO UNDERGROUND, OVERHEAD, SURFACE, OR EMBEDDED UTILITIES OR STRUCTURES, AND FOR WATER-RELATED LOSSES, EXCEPT TO THE EXTENT CAUSED BY THE SOLE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COMPANY. TO THE FULLEST EXTENT PERMITTED BY LAW, THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND SHALL SURVIVE TERMINATION

OR EXPIRATION OF THIS AGREEMENT, AND CUSTOMER AGREES THAT INSURANCE MAINTAINED BY COMPANY, IF ANY, SHALL NOT EXPAND COMPANY'S LIABILITY BEYOND THE LIMITATIONS SET FORTH HEREIN. Furthermore, Company Liability for Goods/Cargo, Upper Tier entity, or Owner controlled Goods/Cargo under the Company's care, custody, or control is limited to \$100,000 even if held in storage or as bailment of Company. Company's liability for Goods/Cargo damage shall not exceed \$100,000 unless the Customer requests and purchases additional coverage. Requests for additional coverage will be accommodated by Company at additional costs to Customer. Also see posted tariffs/rates at Company's Website. This includes all Goods/Cargo that are held by Company at any warehouse or storage facility or are in Temporary Transit and or Storage using the Company's asset-based trucks or USDOT Brokerage Services.

37. ASSUMPTION AND RELEASE. The Customer assumes all risks associated with the performance of any and all Work occurring under or arising out of this Agreement, including, without limitation, any risks, claims, demands, damages, losses, suits, or causes of action arising from or related to the acts or omissions, negligence, or carelessness of the Customer, any Customer Site Supervisor or Field Representative, or the Customer's agents, servants, employees, subcontractors, independent contractors, invitees, or any other person or entity acting on its behalf or under its control. The Customer further expressly assumes all risks of loss, damage, injury, or death to persons or property, whether arising before, during, or after the performance of such Work, and regardless of whether such risks are known or unknown, foreseeable or unforeseeable. To the fullest extent permitted by applicable law, Customer waives, releases, and forever discharges Company and its parent, affiliates, subsidiaries, officers, directors, members, managers, agents, servants, employees, representatives, and insurers from any and all liability, claims, demands, damages, costs, and expenses (including attorneys' fees), of any kind or nature whatsoever, whether arising in contract, tort (including negligence), strict liability, or otherwise, for any death, disability, personal injury, property damage, economic loss, or other harm arising out of or in any way related to the performance of Work under or in connection with this Agreement, except to the extent caused by Company's gross negligence or willful misconduct, if such limitation is required by applicable law. This assumption of risk and release shall survive the completion, termination, or expiration of this Agreement and shall be binding upon the Customer and its heirs, successors, and assigns.

38. INDEMNIFICATION AND RELEASE. Parties understand and agree that a safe workplace with no accidents is the goal of both Parties. However, in the event of an accident or incident, Parties agree to each pay their fair share of damages based on their pro-rata share of liability. In accordance with the Preamble and Section 1 (General Terms and Conditions) of this Agreement, this Section supersedes any other contract provision involving or dealing with Indemnity. Customer shall indemnify, defend, and hold harmless Company from and against any and all claims, damages, losses, or expenses arising out of or related to jobsite safety, site conditions, or hazards, except to the extent caused by the sole negligence, gross negligence or willful misconduct of Company.

ARIZONA INDEMNIFICATION AND RELEASE PROVISIONS. IT IS THE PARTIES' INTENT THAT THIS PROVISION IS SPECIFICALLY IN COMPLIANCE WITH ALL ARIZONA LAWS including §32-1159; §34-226 and §41- 2586, AND TO THE FULLEST EXTENT PERMITTED BY ARIZONA LAW, LESSEE AGREES TO INDEMNIFY, RELEASE, AND SAVE LESSOR, ITS EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS OR LOSS FOR DEATH OR INJURY TO PERSONS INCLUDING LESSOR'S AND LESSEE'S EMPLOYEES, OF ALL LOSS, DAMAGE OR INJURY TO PROPERTY, INCLUDING THE EQUIPMENT, ARISING IN ANY MANNER OUT OF LESSEE'S OPERATION OR USE OF THE EQUIPMENT. LESSEE'S OBLIGATION TO INDEMNIFY SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, INDEMNITY FOR ANY AND ALL LIABILITY OF LESSOR ARISING OUT OF ANY STATUTE, REGULATION OR DUTY IMPOSED BY LAW. LESSEE'S OBLIGATION TO INDEMNIFY SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, LESSOR'S COMPLETE SCOPE OF WORK, INCLUDING ALL SERVICES, ADVICE, RECOMMENDATIONS, PLANS AND SPECIFICATIONS PROVIDED. IT IS THE PARTIES' INTENT THAT THIS DUTY TO INDEMNIFY IS AS BROAD AS PERMITTED BY ARIZONA LAW. Lessee's duty to indemnify hereunder shall include all costs or expenses arising out of all claims specified herein, including all court and/or arbitration costs, filing fees, private investigator/adjustor fees and costs, expert fees and costs, costs of storage and down time for inability to use the Equipment, and costs of testing of property, Equipment, or other items initiated by the Lessor, attorneys' fees and costs of settlement. Lessee shall be required to indemnify Lessor for Lessor's own negligence or fault, whether the negligence or fault of the Lessor be direct, indirect or derivative in nature. However, the Lessee shall not be required to indemnify Lessor for liability for loss or damage resulting from the sole negligence of the Lessor or the Lessor's agents, employees or Indemnitees. Notwithstanding the foregoing sentence and in accordance with §32-1159.01, for any Work regarding a dwelling as defined by §12-1361, Lessee shall be not required to indemnify Lessor from or against liability for loss or damage resulting from the negligence of Lessor or the Lessor's indemnitees, employees, subcontractors, consultants or agents. The Lessee's obligations hereunder shall further not be limited by the amount of its liability insurance and the purchase of such insurance for Lessor shall not operate to waive any of the above obligations. This provision is separate and distinct from any other provision or paragraph in this contract, including any provision or paragraph concerning partial indemnification or procurement of insurance. If this paragraph is declared invalid, then all other paragraphs of this

contract shall stand.

39. INSURANCE. Parties understand and agree that a safe workplace with no accidents is the goal of both Parties. However, in the event of an accident or incident, Parties agree to each pay their fair share of damages based on their pro-rata share of liability. In accordance with the Preamble and Section 1 (General Terms and Conditions) of this Agreement this section supersedes any other contract provision involving or dealing with Insurance.

ARIZONA INSURANCE. To the fullest extent permitted by Arizona law, the Lessee agrees to purchase, maintain and carry the following insurance coverages prior to the Equipment's arrival on the job site. The Lessee shall procure the following coverages for Lessor: a. Workers' Compensation and Employers' Liability insurance, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b. Primary non-contributory Commercial General Liability ("CGL"), Commercial Auto (CA) and Rigger's Liability (RL) insurance including loss of use coverage on an occurrence basis, along with bodily injury and property damage coverages with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; c. Excess/umbrella following form non-contributory insurance in the amount of at least \$5,000,000 and Lessee's primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Lessor's insurance policies; d. Inland marine/all-risk and or builder's risk which includes an all-risk physical damage insurance, on a primary non-contributory basis, to cover the full insurable value of the Equipment, including any boom or jib, for its loss or damage from any and all causes, including, but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God during the rental term and Lessee shall pay all deductibles and or coinsurance requirements of the inland marine/builders risk policies provided by Lessee and Lessee shall also provide the greater of 6 months or \$500,000.00 rental reimbursement coverage or similar coverages for the Lessor's benefit for any loss or if the Equipment is damaged, stolen, lost or destroyed; e. All policies are to be written by insurance companies acceptable to the Lessor including naming Lessor as Loss Payee, Additional Insured and Certificate Holder; f. For all liability insurance policies (including any excess/umbrella policies) Lessee shall name as an additional insured, Lessor and Lessor's officers, directors, shareholders, members, managers, partners and employees, all affiliated partnerships, joint ventures and corporations of Lessor and anyone whom Lessor is required by contract to name as an additional insured; g. Lessee shall use all of the following ISO endorsements to provide additional insured status and coverage for Lessor: CG 2001 04 13, CG 2007 12 19, CG 2010 04 13, CG 2010 12 19, CG 2026 04 13, CG 2026 12 19, CG 2028 07 04, CG 2028 12 19, CG 2033 12 19, CG 2034 03 97, CG 2034 12 19, CG 2037 04 13, CG 2037 12 19, CG 2038 12 19, CG 2040 12 19, CG 2503 03 97, CG 2039 12 19, CG 2040 12 19, and CG 2404 05 09, CA 0449 11 16, CX 2433 11 16, CU 2478 11 16; except that for any Work regarding a dwelling as defined by §12-1361, Lessee shall only use additional insured endorsements that are in compliance with §32-1159.01; h. Additional Insured coverage shall include, but not be limited to, coverage for any and all liability of Lessor arising out of any statute, regulation or duty imposed by law; i. Additional Insured coverage shall include, but not be limited to, coverage for Lessor's complete Scope of Work, including all services, advice, recommendations, plans or specifications provided; j. Lessee shall provide punitive damage coverage for Lessor's benefit on all liability policies, unless prohibited by state law; k. Lessee shall name Lessor as a Primary Loss Payee on all insurance policies; l. Lessee shall provide all insurance certificates to Lessor when requested by Lessor including prior to start of Work by Parties, if the insurance certificate and or attachments including endorsements show or indicate that the Lessee does not have the required insurance, Lessor does not waive any right to withhold money, or bring Arbitration or Suit against the Lessee for Lessee's failure to provide the required insurance as provided by this term and conditions along with all other terms and conditions of the Agreement between the Parties; Lessor does not waive any rights that Lessor has if the Lessee fails to provide the required insurance; the Parties agree that the required insurance is customary and proper for the type of Work being provided by Lessor and that the Lessee may request and negotiate Lessee providing other types of coverages and/or limits for the Work provided by Lessor.; m. All of Lessor's policies, and the policies of anyone Lessor is required to insure shall be excess over all of Lessee's policies; n. All Lessee's policies shall be endorsed to require the insurer to give at least thirty (30) days advance notice to all insured's, including additional insured's, prior to cancellation or non-renewal; o. All Lessee's policies must remove any exclusion for explosion, collapse and underground operations (XCU); p. All Lessee's policies must remove certain exclusions including (1) the "employer's liability exclusion," for all insureds, including notices and endorsements for injuries to an insured's employee(s); and (2) any Professional Services liability exclusion for "Professional Services" performed on a job, as that term is defined to include services performed requiring a "license, advanced degree or certification"; and/or any policy exclusion that defines Professional Services as Rigging, Lift Director Operations, Signaling Operation, House Moving Operations, Pile Driving Operations, Demolition Operations, Concrete Pump Operations, Pilot Car Operations, Millwright Operations, Crane Operations or Crane Usage; (3) any coverage exclusions for Work performed in the state of New York, including the City of New York; (4) any coverage exclusions for Work performed in the state of New Jersey.; q. All Lessee's policies must include coverage for blanket contractual liability for the obligations assumed here-under and also for the liabilities assumed in the Indemnity section above and along with providing an "On Hook" or Care Custody and Control endorsement so that any item that is under the Care Custody or Control of the Leased Employee is covered by the CGL policy, and J (4) and J (5) of the CGL Property Damage policy exclusions are deleted. In the event of loss, proceeds of property damage insurance on the Equipment shall be first made payable to Lessor. Lessee's agreements to indemnify and hold Lessor harmless from any liability, damage, and loss are in addition to, and not an alternative to, these insurance provisions and the

purchase of any of the above coverages shall not operate to waive any of the above indemnity provisions. To the extent that the Lessee may perform under this Agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Lessor's right to maintain any breach of contract action against the Lessee. Lessee hereby agrees to waive any and all rights of subrogation and any and all lien rights (including those arising from Workers' Compensation/Employers' Liability policies or other employee benefit programs, CGL policies, or similar policies) which may accrue to it or its insurers. The Lessee understands that this waiver shall bind its insurers of all levels and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this Agreement to provide the coverage under this Agreement.

40. ACCIDENT INVESTIGATION. As part of Customer's obligations under this Agreement, Customer shall bear and promptly reimburse all costs and expenses associated with any investigation initiated by Company, its insurers, or its third-party adjusters or representatives (collectively, "Representatives") relating to any accident, incident, loss, or claim of any kind occurring during the term of this Agreement that directly or indirectly involves the Equipment or Operating Personnel, regardless of fault and whether such event results in personal injury, death, property damage, or any combination thereof. The determination to initiate an investigation, the timing thereof, and the scope, methods, and extent of such investigation shall be in the sole and absolute discretion of Company or its Representatives. Recoverable costs shall include, without limitation, attorneys' fees (including for site inspections, document review, and witness interviews), expert and forensic expert fees, investigator and adjuster fees, costs of travel and lodging, photography and videography, costs of obtaining, preserving, collecting, reviewing, and reproducing documents and evidence, electronic discovery costs, site inspection expenses, testing of any kind (including destructive and non-destructive testing), accident reconstruction, data retrieval, costs to secure the Equipment or Job Site, transport, dismantle, store, preserve, and maintain Equipment or the Job Site or any other property as evidence, and any related administrative or overhead charges. Customer shall fully cooperate with all such investigations, including preserving evidence, providing access to Operating Personnel, records, and sites, and complying with all reasonable requests of Company and its Representatives. All such costs shall be invoiced to Customer and shall be immediately due and payable in accordance with the payment terms of this Agreement, and failure to pay shall constitute a material breach. Customer's obligations under this section shall survive termination or expiration of the Agreement.

CLAIMS & LEGAL ENFORCEMENT

41. NOTICE AND WAIVER. Back charges and claims for damages resulting from delay due to the fault of Company shall be deemed waived by Customer unless claim is made in writing to Company within forty-eight (48) hours from the beginning of the delay. Any action, demand, lawsuit, arbitration or any other claim by Customer against Company arising out of or related to this Agreement must be commenced within one (1) year from the date on which any such right, claim, or cause of action shall have first accrued.

42. SUIT LIMITATION. Any action, demand, lawsuit, arbitration or any other claim by Customer against Company arising out of or related to this Agreement must be commenced within one (1) year from the date on which any such right, claim, or cause of action shall have first accrued.

43. ATTORNEY'S FEES. Customer shall pay or reimburse to Company all costs and expenses, including attorneys' fees, incurred by Company in exercising any of its rights or remedies or enforcing any of the terms or conditions found in this Agreement.

44. WAIVERS. No delay or failure to exercise any right or remedy accruing to Company or any breach or default of Customer under this Agreement will impair any such right or remedy of Company or be construed as a waiver of any such breach or default, or an acquiescence therein, or a waiver of or acquiescence in any breach or default thereafter occurring; nor will waiver of a single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Company of any breach or default by Customer under this Agreement, or any waiver on the part of Company of any provision or condition of this Agreement, must be in writing and will be effective only to the extent specifically set forth in such writing.

45. CHOICE OF LAW; VENUE. This proposal and any Contracts arising from acceptance hereof shall be governed by and interpreted in accordance with the laws of the State where the Equipment is rented from and the Federal laws of the United States of America applicable therein, including, but not limited to, federal transportation law while the Equipment or Cargo is in transit. However, if a state law requires that a construction indemnity statute apply to Equipment rented in the state where the Equipment is being used, then that State's laws shall apply. The venue for all disputes among and between the Parties concerning the validity, construction, or effect of this Contract, or the rights and obligations created hereunder, shall be in the city, county and state where the Supplier is located. This section applies only to claims not covered by the Dispute Resolution provisions of this Agreement.

46. NOTICE. All notices to be given pursuant to this Agreement shall be provided to the respective Party at the addresses contained in this Agreement shall be deemed to have been properly given when either (i) personally delivered, or (ii) mailed by registered or certified mail, postage prepaid with return receipt requested, or (iii) delivered by private courier, or (iv) email, electronic receipt requested. A copy of any such notice, although not constituting official notice, shall be provided to the respective Party by electronic mail. Notice by electronic mail shall become official notice under this Agreement, upon acknowledgment of receipt sent by the Parties through an email system such as Microsoft Outlook.

DEFAULT & REMEDIES

47. DEFAULT AND REMEDIES.

- a. If:
 - (1) Customer fails to make any payment, as and when required under this Agreement.
 - (2) Customer breaches or fails to perform at the time and in the manner herein specified any term, covenant or condition contained in this Agreement and such breach or failure continues for five (5) days after written notice thereof to Customer.
 - (3) Customer files or has filed against it a petition in bankruptcy, or a custodian, receiver or trustee is appointed for Customer or for a substantial part of its assets, or Customer becomes insolvent or unable to pay its debts as they become due, or any substantial part of Customer's property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency; or (4) Customer is acquired by or merges with any other entity, unless this Agreement is assumed in writing by the new entity and such assumption is agreed to by Company
- b. Then: In the case of any of the foregoing events, each an "Event of Default", then Company shall, without notice, demand or action of any kind by Company, all of which are hereby waived by Customer:
 - (1) Take possession of the Equipment (damages occasioned by such taking of possession being expressly waived by Customer), send an electronic message to the Equipment which disables the Equipment from use, or otherwise require Customer to produce the Equipment and to make it available to Company at any place designated by Company, and thereupon Customer's right to the possession of the Equipment will terminate, and Customer shall remain and be liable for the payment of the remaining Rent and all other obligations imposed upon Customer hereunder, all of which will become immediately due and payable.
 - (2) Rent the Equipment or any portion thereof for the remainder of the term of this Agreement to such third party as Company may elect, in which event Company will apply the net proceeds from any such Agreement in payment of the Rent and other obligations due from Customer to Company hereunder (by acceleration or otherwise), and Customer shall remain liable to Company for any deficiency.
 - (3) Sell the Equipment or any portion thereof to a third party at public or private sale without demand or notice of intention to sell or of such sale, in which event Company will apply the net proceeds of any such sale in payment of the Rent and other obligations due from Customer to Company hereunder (by acceleration or otherwise), and Customer shall remain liable for any deficiency.
 - (4) Deduct all costs and expenses incurred in connection with the recovery, repair, storage, renting or sale of the Equipment from the proceeds of such renting and/or sale; and/or
 - (5) Terminate Customer's rights hereunder.
- c. No right or remedy conferred upon or reserved to Company by this Agreement is exclusive of any other right or remedy granted herein or provided by law; all rights and remedies of Company conferred upon Company by this Agreement or by law are cumulative and in addition to every other right and remedy available to Company.
- d. In the event of any default or failure specified above, Customer shall be liable for all costs and expenses expended or incurred by Company in the enforcement of its rights hereunder (including reasonable attorneys' fees and court or Arbitration Costs).
- e. If any of the above Events of Default occur to any guarantor or any other Party liable for payment or performance of Customer's obligations under this Agreement, such event shall also be considered an Event of Default under this Agreement.
- f. Company has the right to choose among the remedies available to it and to exercise any or all of them at any time after a default by Customer.
- g. A waiver of one default by Company does not apply to any future or other default.

48. RIGHT TO CURE. If Customer fails to pay or perform any of its obligations under this Agreement, then Company may itself pay or perform such obligations and the amount of any payment plus Company's reasonable expenses in connection with such payment or performance, together with any interest due hereunder, shall be deemed additional Rent, payable by Customer on demand.

COMPLIANCE & GENERAL LEGAL

49. COMPLIANCE WITH LAW; SPECIFIC FEDERAL LAWS.

Customer shall, at all times:

- a. Comply with all federal, state, provincial and local laws and regulations in all material respects relating to this Agreement; and
- b. Have in place and maintain any and all licenses, permits, and other authorizations required by federal, state, provincial and local laws.

Customer certifies that:

- a. It is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control
- b. It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.

Finally, Customer shall, at all times, perform its obligation under this Agreement in compliance with all applicable financial sanction laws, rules and regulations, including, but not limited to, all applicable laws, rules and regulations regarding bribery or money laundering. Customer further agrees that any and all transactions or funds transfers occurring under this Agreement shall be subject to scrutiny for compliance with all such laws, rules and regulations and that any and all transactions or funds transfers may be embargoed or otherwise restricted until compliance with these laws, rules and regulations can be verified.

50. INDEPENDENT COMPANY. This Agreement does not create or evidence a partnership or joint venture and Customer and its agents, servants and employees, shall at all times, be an independent service provider, and employees of Customer shall in no event be considered employees of Company, nor shall they be eligible for any employee benefits or other benefits from Company.

51. THIRD PARTY BENEFICIARY. Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the Parties and their legal successors and permitted assigns, any rights, benefits, or obligations.

52. TRADE SECRETS. Company and Customer shall maintain in strict confidence all Trade Secrets as defined under the federal Defend Trade Secrets Act of 2016 (DTSA) (codified at 18 U.S.C. § 1836 et seq.) and applicable state Uniform Trade Secrets Acts, including without limitation any quote, bid, estimate, proposal, drawing, operational sequence, lift plan, site plan, and all job- or project-specific details, together with this Agreement and its terms (collectively, the "Submission"). Customer shall not disclose, distribute, or make available any Submission or part of any Submission to any competitor of the Company. Each Party shall use the other Party's Trade Secrets solely for purposes of performing under this Agreement and for no other purpose. "Trade Secret" includes all financial, business, scientific, technical, economic, and engineering information, including but not limited to patterns, plans, lift plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible and regardless of the medium in which such information is stored or memorialized. Disclosure of Trade Secrets shall be permitted only to a Party's directors, officers, employees, attorneys, insurers, lenders, and authorized agents who have a need to know such information for purposes of this Agreement and who are bound by confidentiality obligations at least as protective as those contained herein. Disclosure may also be made where required by law, regulation, or court order, provided that the disclosing Party gives prompt prior written notice (to the extent legally permitted) and cooperates in seeking confidential treatment or protective orders. Each Party shall implement and maintain commercially reasonable administrative, technical, and physical safeguards to protect Trade Secrets from unauthorized access, disclosure, or use, including cybersecurity protections consistent with industry standards. Any unauthorized disclosure or suspected breach shall be promptly reported to the other Party, and the disclosing Party shall cooperate fully in mitigating any resulting harm. All Trade Secrets shall remain the exclusive property of the disclosing Party, and no license or ownership rights are granted except as strictly necessary to perform under this Agreement. Upon termination or request, all Trade Secrets, including copies, shall be promptly returned or securely destroyed, with written certification of destruction upon request. The obligations set forth herein shall survive termination or expiration of this Agreement for so long as the information qualifies as a Trade Secret under applicable law. The Parties acknowledge that any breach or threatened breach will cause irreparable harm for which monetary damages would be inadequate; therefore, the non-breaching Party shall be entitled to immediate injunctive relief, specific performance, and any other remedies available at law or in equity, without the requirement to post bond. These rights are cumulative and in addition to any other remedies available.

ADDITIONAL TERMS AND CONDITIONS FOR DISPUTE RESOLUTION

DISPUTES. All disputes will be resolved according to the T&C's set forth below.

SECTION 1. DISPUTE RESOLUTION

- a. In the event of a dispute between the Lessor and Lessee arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or the work to be performed by Lessor or Lessee, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, by any Party, any and all disputes shall be decided in accordance with these conditions. Such disputes include, but are not limited to, any claim the Lessee or Lessor may have related in whole or in part concerning the conduct of any other Party or Lessor and/or their employees or agents. Lessor and Lessee each shall be afforded a reasonable opportunity to present information and testimony involving its claims, rights or defenses and shall be solely responsible for the presentation of any information or testimony concerning its claims, rights or defenses.
- b. Lessor and Lessee agree to continue performance of all Work, and payments on all non-disputed amounts despite the existence of disputes between them. The existence of a dispute shall not be sufficient cause or justification for any failure to otherwise comply with this Agreement or with any underlying contract or agreement.

SECTION 2. MEDIATION

- a. Negotiation Prior to Arbitration ("Mediation"): Prior to any arbitration and/or litigation after arbitration being instituted by any Party arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, the Parties shall each appoint an executive corporate officer to meet to negotiate the claim/dispute through an in-person settlement meeting ("Mediation"). An Insurance representative for each Party shall attend the Mediation in order to bind the insurer to any settlement. Corporate officers attending shall have full settlement authority to resolve the claim/dispute. This Mediation shall be a condition precedent to the filing of any arbitration and shall be in accordance with Section 2(b). Prior to engaging in any mediation, all Parties shall provide notice of any dispute to their respective insurers.
- b. Submission of Itemized Claims. Within Thirty (30) business days of the Lessor or Lessee filing and serving a demand for Mediation, the Party filing the Mediation demand ("Claimant") shall provide the other Party ("Respondent") with a written, itemized statement of its claim, that shall include copies of all documents supporting its liability statement and damages along with citations to specific provisions of the Agreement that support Claimant's position ("Claimant's Itemized Statement of Claim"). The Claimant shall make all requests for documents from the Respondent when the demand for Mediation is filed. The Respondent shall have 15 days to respond and turn over the requested documents. Claimant's Itemized Statement of Claim shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed served as of the date of Respondent's receipt from email or overnight delivery service of the Itemized Statement of Claim. Within Thirty (30) business days after Respondent receives Claimant's Itemized Statement of Claim, Respondent shall provide the Claimant with its answer, affirmative defenses and counterclaim, if any, which shall include a written, itemized statement in support of its defense and/or counterclaim, along with copies of all documents supporting its damages and citations to specific provisions of any underlying contract or agreement, whether written or oral. (Respondent's Itemized Statement of Claim). The Respondent shall make all requests for documents from the Claimant when the Respondent's Itemized Statement of Claim is filed. The Claimant shall have 15 days to respond and turn over the requested documents. Respondent's Itemized Statement of Claim shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed served as of the date of Claimant's receipt from email or overnight delivery service of the Itemized Statement of Claim. If any Party fails to turn over any reasonably requested documents, or either Party fails to participate in the Mediation process in good faith, the arbitrator may make such a finding and take such finding into account when determining liability and damages, in any later arbitration of these claims. Each Party shall provide copies of all Statements of Claim and relevant supporting documents to their respective insurers. The Parties shall meet and mediate all claims as soon as possible thereafter. Notwithstanding the foregoing, the Mediation process, including the exchange of information and documents shall be completed with 90 days of the filing of a demand for Mediation.
- c. Venue for Mediation. All claims, counterclaims or disputes between Lessor and Lessee, which are subject to Mediation pursuant to Section 2, shall be mediated in the county in which the related job or project is located, or as otherwise agreed.
- d. Offers of Settlement. Within thirty (30) days of receiving Respondent's Itemized Statement of Claim, or if Respondent does not serve one, within thirty (30) days from when Respondent's Itemized Statement of Claim was due, Claimant shall serve Respondent with a written settlement offer that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Claimant's settlement offer shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed received upon Respondent's receipt of Claimant's settlement offer. Claimant's settlement offer shall state the

amount it will accept from or pay to Respondent to settle all claims asserted in the arbitration. Within thirty (30) business days of Respondent's receipt of Claimant's settlement offer, Respondent shall serve a written settlement offer to Claimant that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Respondent's settlement offer shall be served via email or overnight delivery service that provides proof of delivery and shall be deemed served upon Claimant's receipt of Respondent's settlement offer. Respondent's settlement offer shall state the amount it will accept from or pay to Claimant to settle all claims asserted in the arbitration. Claimant's filing of an amended demand for arbitration or Respondent's filing of an amended counterclaim shall in no way alter the timing requirements set forth herein for purposes of determining the prevailing Party. If Respondent does not submit a written settlement offer to Claimant as provided herein, then Respondent's settlement offer for purpose of determining the prevailing Party shall be considered the greater of: (i) the amount set forth in Respondent's Itemized Statement of Claim, (ii) the amount requested in Respondent's initial counterclaim, (iii) the amount requested by Respondent at the final arbitration hearing, or (iv) \$0.00.

SECTION 3. ARBITRATION

a. **Scope and Venue of Arbitration:** All claims, counterclaims or disputes between Lessor and Lessee arising out of or relating to this Agreement, or any underlying contract or agreement, whether written or oral, or the work to be performed by Lessor or Lessee at any applicable job site, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, whether based on contract or tort, which are not resolved pursuant to Section 2, shall be decided by a final, binding, non-appealable arbitration, to take place in the county in which the related job or project is located, or as otherwise agreed. The arbitration shall be in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") then existing subject, to the requirements and limitations set forth herein. The arbitration shall be further subject to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and any applicable state statutes governing arbitration.

b. **Arbitrator's Selection and Authority:** Any matters to be arbitrated under this Agreement shall be decided by a single arbitrator selected by agreement of the Parties. The appointed arbitrator shall be an impartial person with extensive experience and who has an expert understanding of the industry. If within seven (7) calendar days of either Party filing for arbitration, the Parties have not agreed on an arbitrator, then the appointment of an arbitrator shall be referred to the AAA office in or nearest to the county in which the related job or project is located. The AAA shall appoint a single arbitrator who is an impartial local person with extensive experience and who has an expert understanding of the industry to serve in this matter. The arbitrator shall have full and complete authority to decide any and all claims that have been properly noticed and preserved in accordance with this Agreement. Any judgment entered by the arbitrator shall be final, binding and non-appealable. The arbitrator is required to enforce the terms of this Agreement, including but not limited to, the determination of the prevailing Party for purposes of awarding attorney's fees and costs. The arbitrator shall not be authorized to award any punitive damages and shall only be permitted to award consequential damages if the Parties have not waived consequential damages by contract and only to the extent permitted under the express terms of this Agreement. Should either Party assert that a claim(s) submitted to arbitration has not been properly noticed and/or has been waived or released, then the Arbitrator shall first decide any such issues by way of a declaratory judgment action decided by solely by the arbitrator, with both Parties waiving any right to a trial by jury. Any arbitration between the Parties for non-Declaratory Action issues shall be stayed pending any such declaratory judgment action so that the Arbitrator can first decide what claims should proceed forward in arbitration. If the Arbitrator finds that a claim(s) was not properly noticed and preserved and/or was released, then the arbitrator shall dismiss that claim(s) and shall not decide such claim(s). The arbitration shall only proceed after a final decision on any declaratory judgment action brought hereunder and shall only include those claims found to have been properly noticed, preserved and not released. All Parties consent to such jurisdiction.

c. **Choice of Law.** This Agreement shall be construed according to the laws of the state where the work is performed, unless otherwise determined by law.

d. **Prevailing Party in Arbitration.** The prevailing Party in any arbitration shall be entitled to an award of attorney's fees and costs. The prevailing Party in any arbitration shall be the Party whose last written settlement offer, as set forth in Section 2 above, is closer to the initial arbitration award, prior to considering costs (including AAA and arbitrator costs), interest, attorney fees and/or expert fees. If the difference between the initial arbitration award and the Parties' last settlement offers are equal, then neither Party shall be the prevailing Party for purposes of an award of attorneys' fees and costs.

e. **Nondisclosure of Settlement Offers to the Arbitrator:** Settlement offers shall only be disclosed to the arbitrator after the initial arbitration award has been entered and shall only be used to determine the prevailing Party for purposes of the award of attorney's fees and costs.

f. Venue of Litigation. Any dispute arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or the work to be performed by Lessor or Lessee at any applicable job site, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, which is not subject to mediation and arbitration under this Agreement or which the Parties have mutually waived their right to arbitrate under this Agreement shall be litigated in the state where the work is performed, unless otherwise determined by law. Such action shall proceed in The United States District Court in or nearest to the county in which the related job or project is located. Both Parties acknowledge that should litigation ensue, the United States District Court in or nearest to the county in which the related job or project is located, shall have exclusive jurisdiction and venue over any lawsuits arising under this Agreement, or any underlying contract or agreement, whether written or oral, including any motion to confirm an arbitration award. The prevailing Party in any such litigation shall additionally be entitled to an award of all attorneys' fees and costs.

g. Waiver of Right to Jury Trial: LESSOR AND LESSEE FURTHER AGREE THAT SHOULD ANY LITIGATION OR ARBITRATION ARISE DIRECTLY OR INDIRECTLY, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL, AND THE PARTIES HEREBY STIPULATE THAT ANY SUCH TRIAL SHALL OCCUR WITHOUT A JURY.

h. Transfer of Venue. Should either Party file any action in court against the other Party arising out of a dispute as defined in this Agreement, said Party agrees to transfer the action to the Arbitrator to make any and all decisions concerning any dispute including the authority stated in Section 3, including the authority to decide if the action is a dispute covered by this Agreement. If the Arbitrator decides that the dispute should be decided in accordance with this Agreement, the Party that filed the action shall pay all costs incurred by the other Party, including attorneys' fees, incurred in dismissing and/or transferring the venue of such matter to the Arbitrator.

i. Discovery in Arbitration. Discovery in any arbitration hereunder shall be limited to the following and must be done in accordance with the Federal Rules on Civil Procedure:

(1) The production of each side's job/project/work files as they are maintained in the ordinary course of business and any file index related to same, with all such documents being produced electronically if reasonably feasible or otherwise in hard copy, in the arbitration venue herein indicated.

(2) Other than the documents produced pursuant to Section 2 and Section 3(e)(i) no other written discovery shall be permitted, except on a showing of good cause to the arbitrator. The Party requesting any documents, other than those produced pursuant to Section 2 and Section 3(e)(i) shall be responsible to pay for all costs associated with such production, including attorneys' fees incurred in the review for privilege and relevance, third party consultant fees and any other costs associated with such production. The payment of all such costs is an express condition precedent to either side's right to any such production. The cost associated with obtaining electronic discovery shall not be taxed to the prevailing Party as costs/fees and to the extent these conflicts with any provision in the AAA rules, this provision shall control.

(3) Three (3) fact depositions with one being a corporate representative under the Federal Rules of Civil Procedure, if so requested, with all such depositions to take place in the arbitration venue herein indicated.

(4) The opinions and the depositions of any designated expert witnesses. The deposition of all experts that intend to testify or submit opinions at the arbitration hearing must be concluded sixty (60) days before the scheduled arbitration date. Each side will pay for their own expert time and expenses to appear for deposition in the county and state where the contract was being performed. Thirty (30) days prior to any expert deposition, all experts that will testify or submit opinions at the final hearing shall provide a report containing all of his/her opinions and all information, documents and facts relied upon in arriving at such opinions, or if no such report is prepared, the subject matter on which the witness is expected to present evidence and a summary of the facts and opinions to which the witness is expected to testify and all information/documents/facts relied upon in arriving at such opinions, along with the witness's qualifications, including a list of all publications authored in the previous 10 years and a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition and a statement of the compensation to be paid for the study and testimony in the case.

(5) Each Party shall be entitled to have the arbitrator issue six subpoenas for documents. The other side shall be entitled to a copy of all documents provided in response to any third-party subpoena, provided however, that it must pay for the costs of reproduction, but shall be entitled to use a third party to make such copies.

(6) No other discovery shall be permitted by the Arbitrator, unless mutually agreed to by the Parties, upon good cause shown.

j. These sections and provisions (including all sub-parts) shall survive the termination of this Agreement, or any related or underlying contract and/or completion of the related work or project.